

# PATENT APPLICATION FEE DETERMINATION RECORD

Effective January 1, 2003

Application or Docket Number

509-680

## CLAIMS AS FILED - PART I

	(Column 1)	(Column 2)
TOTAL CLAIMS	36	
FOR	NUMBER FILED	NUMBER EXTRA
TOTAL CHARGEABLE CLAIMS	36 minus 20 =	* 16
INDEPENDENT CLAIMS	5 minus 3 =	* 2
MULTIPLE DEPENDENT CLAIM PRESENT <input type="checkbox"/>		

\* If the difference in column 1 is less than zero, enter "0" in column 2

## CLAIMS AS AMENDED - PART II

	(Column 1)	(Column 2)	(Column 3)
AMENDMENT A	CLAIMS REMAINING AFTER AMENDMENT	HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA
Total	* 37	Minus ** 36	= 1
Independent	* 5	Minus *** 5	= 0
FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM <input type="checkbox"/>			

	(Column 1)	(Column 2)	(Column 3)
AMENDMENT B	CLAIMS REMAINING AFTER AMENDMENT	HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA
Total	*	Minus **	=
Independent	*	Minus ***	=
FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM <input type="checkbox"/>			

	(Column 1)	(Column 2)	(Column 3)
AMENDMENT C	CLAIMS REMAINING AFTER AMENDMENT	HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA
Total	*	Minus **	=
Independent	*	Minus ***	=
FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM <input type="checkbox"/>			

\* If the entry in column 1 is less than the entry in column 2, write "0" in column 3.

\*\* If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, enter "20."

\*\*\* If the "Highest Number Previously Paid For" IN THIS SPACE is less than 3, enter "3."

The "Highest Number Previously Paid For" (Total or Independent) is the highest number found in the appropriate box in column 1.

SMALL ENTITY TYPE ☐

OR OTHER THAN SMALL ENTITY

RATE	FEE	RATE	FEE
BASIC FEE	\$375	BASIC FEE	\$750
X\$ 9=		X\$18=	288
X42=		X84=	168
+140=		+280=	
TOTAL		TOTAL	1208

SMALL ENTITY OR OTHER THAN SMALL ENTITY

RATE	ADDITIONAL FEE	RATE	ADDITIONAL FEE
X\$ 9=		X\$18=	18
X42=		X84=	
+140=		+280=	
TOTAL ADDIT. FEE		TOTAL ADDIT. FEE	

RATE	ADDITIONAL FEE	RATE	ADDITIONAL FEE
X\$ 9=		X\$18=	
X42=		X84=	
+140=		+280=	
TOTAL ADDIT. FEE		TOTAL ADDIT. FEE	

RATE	ADDITIONAL FEE	RATE	ADDITIONAL FEE
X\$ 9=		X\$18=	
X42=		X84=	
+140=		+280=	
TOTAL ADDIT. FEE		TOTAL ADDIT. FEE	

**Advisory Action**

Application No.

09/378,208

Applicant(s)

NICKUM, LARRY A.

Examiner

Sy D Luu

Art Unit

2174

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 11/03/03 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☐ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.
- NOTE: \_\_\_\_\_
3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☒ affidavit, b) ☐ exhibit, and c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the Request for Reconsideration(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: \_\_\_\_\_.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

  
SY D. LUU  
PRIMARY EXAMINER

Continuation of 5. does NOT place the application in condition for allowance because: The declaration filed on 11/03/03 under 37 CFR 1.131 has been considered but is ineffective to overcome the Brown et al. ("Brown-1", US 6,356,908 B1) reference.

The evidence submitted is insufficient to establish a reduction to practice of the invention in this country or a NAFTA or WTO member country prior to the effective date of the reference, see MPEP §715.

The Exhibits A-F comprising the Invention Disclosure Form and Addendum as well as other search related and application documents, individually or together are still not evidence that provide a showing of facts in character and weight, base on the fact that the evidence being insufficient to establish a "reduction to practice" of the invention in this country or a NAFTA or WTO member country prior to the effective date of the reference.

Furthermore, the evidence submitted is also insufficient to establish diligence from a date prior to the date of reduction to practice of the Brown-1 reference. The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of th Brown-1 reference to either a constructive reduction to practice or an actual reduction to practice. There is no evidence provided by the Applicant in the critical period which is the time between the time just prior the filing date of Brown-1 reference to the filing date of this application. MPEP § 2138.06 states that "the critical period for diligence for a first conceiver but second reducer begins not at the time of conception of the first conceiver but just prior to the entry in the field of the party who was first to reduce to practice and continues until the first conceiver reduces to practice," and "an applicant must account for the entire period during which diligence is required." Therefore, the Brown-1 reference is still properly cited as a prior art of reference..